

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

July 17, 2012

The Rhode Island Ethics Commission held its 10th meeting of 2012 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, July 17, 2012, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair Mark B. Heffner

Deborah M. Cerullo SSND, Vice Chair John M. LaCross**

Frederick K. Butler* James V. Murray

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:02 a.m. the Chair opened the meeting. The first order of business was advisory opinions. The advisory opinions were based

on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:

Lee Kissinger, a member of the Exeter-West Greenwich School Committee, a municipal elected position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in negotiations between the School Committee and the district teachers' union that is affiliated with National Education Association of Rhode Island ("NEARI"), given that his wife is a teacher in another district and is a member of another NEARI affiliated teachers' union.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present.

* Commissioner Butler arrived at 9:08 a.m.

In response to Commissioner Cerullo, the Petitioner stated that the NEARI affiliates all look to other contracts for examples of beneficial terms. Upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, there was discussion. Commissioner Cerullo stated that she was concerned that there would be a potential benefit to the Petitioner's wife when her teachers' union contract was negotiated. The Petitioner replied that it was unlikely given that the EWG School Committee intends to

negotiate a better deal for the school, not for the teachers. Chair Cheit suggested that the advisory opinion should reflect that there is no direct benefit or detriment to the Petitioner's wife resulting from the Petitioner's participation in School Committee negotiations. He stated that any impact is remote, contingent and unsure and, thus, it does not fall under section 5(a).

In response to Commissioner Butler, Chair Cheit stated that a financial loss is as important as a financial gain if either is a direct financial impact. Chair Cheit noted that it is uncertain what impact the EWG negotiations would have on any other teachers' unions. Commissioner Cerullo suggested adding a sentence to the conclusion stating that based on the facts presented, the Commission cannot ascertain a direct gain or loss and, therefore, section 5(a) is not implicated. Commissioner Murray amended his original motion and moved for the advisory opinion to be approved as amended, with the additional sentence. The motion was duly seconded by Commissioner LaCross. It was

VOTED: To issue an advisory opinion, as amended and attached hereto, to Lee Kissinger, a member of the Exeter-West Greenwich School Committee.

AYES: James V. Murray; John M. LaCross; Frederick K. Butler; Mark B. Heffner; Ross Cheit.

NOES: Deborah M. Cerullo.

The next advisory opinion was that of:

Kenneth Parrilla, a member of the Westerly Town Council, a municipal elected position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Town Council's consideration of a resolution to fund a sewer expansion to the Misquamicut Beach area, given that his mother-in-law's property is included in the current sewer expansion plans.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to questions from the Commission, the Petitioner stated that if the main sewer line is installed on Winnapaug Road, all properties on Winnapaug Road will be required to connect to the public sewer system. He added that accommodations for the elderly have been discussed but nothing concrete has been proposed. He stated that his mother-in-law is 92 years old and has lived in this home for approximately 60 years. He stated that it would be difficult for him to impartially participate given that he could be going against the clear wishes of his family member. Upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Kenneth Parrilla, a member of the Westerly Town Council.

The next advisory opinion was that of:

Steven Gianlorenzo, a member of the Rhode Island Contractors' Registration and Licensing Board ("Board"), a state appointed position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from accepting state employment as a Senior Building Code Official.

Staff Attorney DiLibero presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Cerullo, the Petitioner stated that he saw the Senior Building Code Official job posted on the Department of Administration's ("DOA") website. Chair Cheit questioned whether the hiring process was more objective or subjective. Staff Attorney DiLibero replied that there were specific professional skills, knowledge and certifications required for the position.

In response to Commissioner Cerullo, the Petitioner stated that he had been a member of the Board for nearly 11 years. He stated that the majority of his work on the Board involved evaluating homeowner complaints relating to bad contractors. He stated that his background as a third generation builder combined with his 35 years of experience mainly contributed to his qualifications for this job. Additionally, he stated that he sought education and certifications on his own, outside of his work on the Board, which were necessary for

the job. Staff Attorney DiLibero stated that the Petitioner's experience on the Board gives him insight into how the Board functions, but such procedures are public knowledge for any applicant to discover on their own.

Staff Attorney DiLibero stated that DOA made the final decision relative to hiring the Senior Building Code Official. She added that there was no connection between the Board members and the hiring of the Board's staff, which is under the authority of DOA. The Petitioner stated that he did not know the person who made the ultimate decision to hire him. Staff Attorney DiLibero clarified that if hired, the Petitioner would be an employee of DOA that is placed to work with the Board. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Steven Gianlorenzo, a Rhode Island Contractors' Registration and Licensing Board member.

The next order of business was a discussion and potential vote regarding updating questions on the financial disclosure form. Chair Cheit stated that Question 10 on the financial disclosure form was discussed in January and February, 2012, recognizing that it was causing some confusion. Staff Attorney Gramitt stated that Question 10 asked people to report gifts over \$100. He stated that it was the Staff's recommendation to remove Question 10 from the financial

disclosure statement. First, he stated that it is not consistent with the \$25/\$75 gift limits in Regulation 5009 and noted that any answer other than “not applicable” would be a violation of the Code. Second, he stated that it was grossly misleading because it would lead a reasonable person to believe that it is okay to accept a gift over a \$100 as long as it is disclosed or to accept a \$95 gift and not disclose it. He stated that an insert was included with the mailing of the 2011 financial disclosure forms in hopes of remedying any confusion. He added that the Commission has the authority to amend the financial disclosure form. Upon motion made by Commissioner Butler and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To remove Question 10 from the financial disclosure form.

The next order of business was a discussion of and potential vote on Common Cause Rhode Island’s request to initiate rulemaking relative to the disclosure of travel/gifts. Staff Attorney Gramitt stated that Common Cause has petitioned the Commission to initiate rulemaking for a matter that it views to be a hole in the Code. He stated that some groups, who may not be interested persons as defined in the Code, give gifts to public officials primarily in the form of travel which is related to their public office. He stated that the public has a legitimate interest in knowing about the source and amount of these gifts. He explained that Common Cause has requested a rule requiring disclosure, not an outright ban, and left it to the Commission to draft appropriate language.

Staff Attorney Gramitt introduced a revised draft regulation for the Commission's consideration. He stated that the current proposal would require all persons subject to the financial disclosure requirement to disclose the source, value and description of any out-of-state travel and related transportation, lodging, meals and entertainment, provided by any person if there is reason to believe that the donor would not have provided the travel but for the official's public office or position. He added that there is an exception for a gift from a family member. He stated that the Commission would sit as the finders of fact to determine whether or not the travel must be disclosed. He informed that the "reason to believe" language is consistent with a similar disclosure statute in South Carolina and is also found in section 36-14-7(a) of the Code. He suggested that it could be implemented by adding it to the annual financial disclosure form.

John Marion, of Common Cause Rhode Island, stated that, after speaking with his Board, he believes that it is appropriate to narrow the disclosure to travel and travel related expenses. He informed that \$100 would be a reasonable minimum amount to disclose. He agreed with the application of the regulation to all persons subject to the financial disclosure requirement. As to the Commission's jurisdiction to require this disclosure, Mr. Marion noted that the Rhode Island Constitution specifically enumerates that the Code of Ethics should include provisions on financial disclosure. He stated that 15 states

require disclosure of non-prohibited travel expenses paid for by someone else. He handed out a 10 page document listing each state and corresponding disclosure rules to the Commissioners. There was discussion about the different state disclosure rules. Mr. Marion stated that the Common Cause Board did not distinguish between in state and out of state travel, but noted that he agreed that any out of state travel was likely to be of a significant value.

Commissioner Butler commented that the current financial disclosure form seeks information that is relevant to conflicts of interest. He noted that this regulation would seek information that is not related to a potential violation of the Code. Chair Cheit replied that the financial disclosure statement reveals conflicts that are not necessarily a conflict of interest under the Code. He added that the purpose of financial disclosure is broader than identifying conflicts of interest; it is also transparency. Staff Attorney Gramitt stated that failure to report the required information on a financial disclosure statement stands on its own as a violation of the Code. He explained that financial disclosure forms are not generally used as exhibits in a section 5(a) or 5(d) case. In response to Commissioner Butler, Staff Attorney Gramitt added that the old gift disclosure statute required disclosure of allowable gifts.

Chair Cheit stated that the definition of interested party is narrow and that there are appearances of impropriety that could be addressed by this regulation. Staff Attorney Gramitt clarified that a failure to

disclose these travel expenses would be a violation of the Code. He stated that financial disclosure forms are filed in the office, kept as public records, and are readily available to members of the public who wish to review them.

Commissioner Cerullo stated that as a policy matter this proposed regulation is a good idea and that she would be interested in receiving feedback from the public during rulemaking. In response to Chair Cheit, Legal Counsel Alves stated that the Commission has jurisdiction to pass this regulation and that it comes down to a policy decision on whether to go forward with it. Commissioner Heffner suggested proceeding in a conservative fashion and asked for a written opinion from Legal Counsel Alves regarding the Commission's authority to regulate this disclosure. Chair Cheit asked Legal Counsel Alves to prepare that opinion for the next meeting.

Commissioner Cerullo suggested that the staff consider certain issues in revising the proposed regulation for the next meeting. First, she suggested considering that it is possible that travel expenses could be incurred in Rhode Island. Second, she questioned whether "person" would include a trade association in its definition. Third, noting the exception for family members, she suggested clarifying that the regulation would not apply if your own agency was sending you to a conference. Fourth, she asked if "donor" was broad enough, suggesting that a person may be paid a speaker's fee for a

conference and not consider that a gift.

Chair Cheit asked Staff to provide examples of what would be included in the GCA to enable the Commission and the public to evaluate when a person has reason to believe that the donor would not have provided the travel but for the official's or employee's public office or position. Commissioner Murray questioned whether the standard should be higher, perhaps a substantial reason to believe. Chair Cheit directed Staff Attorney Gramitt to take the Commissioners' comments into account and provide some alternatives and/or explanations and definitions at the next meeting. Commissioner Butler asked the staff to provide some background on how the questions ended up on the financial disclosure statement. Commissioner Heffner asked for clearer citations to the list of statutes from the 15 states provided by Common Cause. Mr. Marion commented that he found that information on the website for the National Conference of State Legislatures. Staff Attorney Gramitt stated that the staff could provide citations in blue book format at the next meeting.

The next order of business was a discussion regarding statutes of limitations for ethics violations. Commissioner Murray stated that he was concerned that the Commission did not have a statute of limitations given the due process considerations when prosecuting older complaints. At the last meeting he asked for information on other ethics commissions' statutes of limitations. Senior Staff

Attorney D'Arezzo stated that the Ethics Commission has never been challenged on the basis of not having a statute of limitations. She stated that she could not recall it even being an issue in her 15 years of experience at the Commission. She suggested that, arguably, R.I. Gen. Laws § 9-1-13(a) could cover a Commission complaint, given that it is the 10 year catch-all statute of limitation for civil actions in Rhode Island.

Senior Staff Attorney D'Arezzo stated that she researched 25 other jurisdictions, including both municipal and state agencies. She also reviewed discussion forums on the COGEL website and spoke with a few directors from other ethics commissions. She stated that there was some consensus that complaints involving allegations that were 10 years old could be difficult to prove and subject to challenge on due process grounds. Of the 25 entities surveyed, she informed that: 6 had no statute of limitation; 2 had a 6 year statute of limitation; 5 had a 5 year statute of limitation; 2 had a 4 year statute of limitation; 3 had a 3 year statute of limitation; 6 had a 2 year statute of limitation; and 1 had a 12 month statute of limitation. She explained that 6 of these 25 entities had statutes with some sort of tolling or discovery provision in the event of concealment or fraud by the person subject to the complaint.

In response to Chair Cheit, Senior Staff Attorney D'Arezzo informed that the Staff cannot recall any complaint regarding allegations that were more than a few years old having been filed in the past 15 to 16

years. She stated that she could personally recall a complaint regarding allegations occurring, at most, 4 years before it was filed. She stated that a statute of limitation has not been an issue and that, while the Staff has not seen the need to implement one, it is a policy decision for the Commission to make. She suggested that if a very old case were brought to initial determination, the Commission would have the authority to dismiss it because of issues with evidence, witnesses and due process.

Legal Counsel Alves informed that if the Commission wanted to adopt a statute of limitation as a matter of policy, the Commission must first determine if it can be done through regulation or if it must be through statute. Chair Cheit asked Legal Counsel Alves to provide the Commission with a written opinion as to the Commission's authority to enact a statute of limitation at the next meeting. He also directed Senior Staff Attorney D'Arezzo to provide a written memorandum regarding her research on other ethics commissions' statutes of limitation, focusing on analogous state entities and whether they have a tolling provision.

**** Commissioner Cerullo left the meeting at 11:32 a.m.**

The next order of business was a discussion regarding Public Access to Financial Statements. Staff Attorney Gramitt stated that Commission Staff goes above and beyond APRA requirements to promptly comply with requests for financial disclosure statements the same day, usually within the hour. He stated that if the

Commission wanted to make all financial statements available on the website it would take some time to develop the software and get budgetary approval. Chair Cheit instruct Staff to look into the feasibility of posting all financial disclosure statements online. He also directed the Staff to put a notice on the website that financial disclosure statements are readily available and requests can be addressed promptly. He noted that he appreciated how well the Staff has currently handles APRA requests for financial disclosure statements.

The next order of business was the Director's Report. Executive Director Willever reported that there are five (5) complaints, one (1) advisory opinion, and one (1) litigation matter pending. He also stated that four (4) APRA requests were granted since the last meeting.

The next order of business was approval of minutes of the Open Session held on June 19, 2012. Upon motion made by Commissioner Butler and duly seconded by Commissioner Heffner, it was

VOTED: To approve minutes of the Open Session held on June 19, 2012.

AYES: James V. Murray; Frederick K. Butler; Mark B. Heffner; Ross Cheit.

ABSTENTIONS: John M. LaCross.

The next order of business was New Business and general comments from the Commission. First, Chair Cheit informed that Commissioner Harsch has resigned from the Ethics Commission in order to run for election to the Jamestown Town Council. He stated that he would serve as secretary for the minutes for the next two meetings and that the Commission would hold general officer elections in September. Second, he informed that Executive Session will now be scheduled as the last agenda item when there are no substantive matters to be heard for the convenience of the public attending the meeting.

At approximately 11:43 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To go into Executive Session, to wit:

a) Motion to approve minutes of Executive Session held on June 19, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 11:44 a.m. Chair Cheit reported that the Commission took the following action in Executive Session: Voted to approve the minutes of the Executive Session held on June 19, 2012.

[Reporter's Note – The vote was as follows:

AYES: James V. Murray; Frederick K. Butler; Mark B. Heffner; Ross Cheit.

ABSTENTIONS: John M. LaCross.]

At 11:45 a.m., upon motion made and duly seconded, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

**Ross Cheit
Chair**